



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0451]

Hours of Service of Drivers: Oregon Trucking Associations' Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final determination; granting of exemption.

SUMMARY: FMCSA announces its decision to grant the application of the Oregon Trucking Associations (OTA) for a limited exemption from the Agency's hours-of-service (HOS) regulation requiring commercial motor vehicle (CMV) drivers to take 30-minute rest breaks at specified intervals in their duty day. This exemption is limited to CMV drivers engaged in transporting timber from Oregon forestlands, and further limited to periods of the year in which the Oregon Department of Forestry (ODF) has formally restricted logging operations to certain hours of the day due to an elevated risk of forest fire. FMCSA believes that the rest breaks during these periods of restricted operating hours may reduce the volume of timber that OTA drivers can deliver, affecting the economic viability of the Oregon lumber industry. The Agency grants this limited exemption on condition that these exempt drivers do not drive after the 12th hour of their duty day. The Agency finds that the CMV operations of OTA timber transporters under this limited exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This limited exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] subject to the Terms and Conditions stated herein, and expires [INSERT DATE TWO YEARS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency may grant an exemption subject to specified terms and conditions. The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

On December 27, 2011, FMCSA published a final rule establishing mandatory rest breaks for CMV drivers (76 FR 81133). Effective July 1, 2013, drivers may not

operate a CMV if 8 hours or more have elapsed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes [49 CFR 395.3(a)(3)(ii)]. FMCSA did not otherwise specify when drivers must take the 30-minute break.

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on petitions for review of the Agency's final HOS rule of December 27, 2011.¹ That rule imposed a requirement for a 30-minute rest break for interstate drivers of CMVs. The Court upheld the 2011 HOS rule in all respects, except that it vacated the break provision applicable to "short-haul" drivers. To qualify as a short-haul driver, CMV drivers must (1) limit their duty day to a maximum of 12 hours, (2) remain within a 100 air-mile radius of their point of origin throughout their duty day, and (3) return to their work reporting locations at the end of the duty day in (49 CFR 395.1(e)(1)). The Court also vacated the break provision applicable to short-haul drivers who do not need a commercial driver's license (CDL) [49 CFR 395.1(e)(2)], but since drivers of logging trucks need CDLs, that provision will not be discussed here.

In response to the U. S. Court of Appeals decision, on October 28, 2013 (78 FR 64179), FMCSA amended its December 27, 2011, final HOS rule to provide an exception from the 30-minute rest break requirement for short-haul drivers who are not required to prepare records of duty status (RODS). The Agency also removed regulatory text made obsolete by the passing of the July 1, 2013, compliance date for the final rule.

Request for Exemption

The OTA, a trade association, has applied for a limited exemption from the mandatory rest break requirement of 49 CFR 395.3(a)(3)(ii) on behalf of all motor

¹ American Trucking Associations, Inc. v. Federal Motor Carrier Safety Administration, 724 F3d 243 (D.C. Cir. Aug. 2, 2013). FMCSA published its response to the Court's opinion at 78 Fed Reg 64179 (October 28, 2013).

carriers and drivers who operate CMVs to transport logs in interstate commerce from Oregon forestlands. Some Oregon timber is transported by truck to ports for export to other countries, which is interstate commerce. Some is transported to other States by truck, sometimes interlining with rail or water carriers. OTA states that most of its members who engage in lumber operations have interstate operating authority. OTA states that the lumber mills must receive a certain volume of logs to remain economically viable. It bears noting here, that drivers transporting logs from Oregon forests to Oregon lumber mills that are operating in intrastate commerce, and therefore not subject to FMCSA jurisdiction or to this exemption. Some of this transportation to the mills, however, does cross State lines and is therefore interstate transportation covered by the Federal regulations. OTA did not provide a percentage breakdown of those shipments that are in interstate commerce.

The OTA has indicated that a substantial number of its drivers qualify as short-haul drivers, and thus will not require this exemption. The general HOS rule limits certain short-haul drivers to a duty day of 12 hours from the time they come on duty following 10 consecutive hours off duty. Nonetheless, OTA has proposed that all drivers employing this exemption be limited by its terms to a duty day of no more than 12 hours.

When the risk of fire is high, the Oregon Department of Forestry (ODF) limits logging in the forestland to certain hours of the day, such as prior to 1:00 p.m. OTA states that fire-safety restrictions are often imposed from July to late October and that logging operators need all remaining time each day to cut and remove the volume of timber needed to sustain the lumber mills. OTA seeks relief from the 30-minute break requirement only when the ODF is formally restricting logging operations to certain hours of the day due to an elevated risk of forest fire. OTA states that during these

periods of limited operations, CMV drivers employing this exemption would achieve the same level of safety with this exemption in place as they would achieve if required to observe the rest-break requirement.

CMV enforcement officials in Oregon generally have access to the ODF current roster showing what level of forest protection is in place at any time. When Oregon timber transporters travel out of State, they must carry a copy of the ODF order reflecting the alert level at that time, as the exemption terms and conditions will require.

Public Comments

On December 10, 2013, FMCSA published notice of this application and asked for public comment (78 FR 74222). Only one comment was received. An international forest products company that conducts Oregon timber operations supported the application for exemption.

FMCSA Decision

FMCSA reviewed OTA's application for exemption and the public comments. The Agency believes that limiting the timber operations of these CMV drivers to a fixed 12-hour window will promote safety at least as effectively as the 30-minute break. These drivers would be operating like certain short-haul drivers, who are already permitted to follow a 12-hour duty period, during which they are exempt from the break requirement. These timber-transporting drivers would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption [49 CFR 381.310(c)(5)].

Terms of the Exemption

This is an exemption only from the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)]. Today's exemption is restricted to drivers operating CMVs when

engaged in interstate logging transportation originating in forestlands of the State of Oregon during periods in which the Oregon Department of Forestry (ODOF) imposes Industrial Fire Precaution Level 3 (IPFL3) on those lands, restricting the transportation of logs in those forests to certain hours of the day due to an elevated risk of forest fire.² Drivers operating under this exemption must be released from duty no more than 12 consecutive hours after the time they come on duty following 10 consecutive hours off duty. Drivers operating under this exemption must maintain a record of duty status (“log book”) for the days on which they travel outside a 100 air-mile radius of their normal work reporting location. If an individual chose to forego this short-haul exemption either by travelling outside the 100 air-miles or by working a 14 hour day instead of the 12 hours required by the exemption, he or she would be required to maintain a logbook for that day and also comply with the 30-minute rest break provision. The exemption is limited to the period from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to [INSERT DATE TWO YEARS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

Notification to FMCSA

Motor carriers must notify FMCSA by email addressed to MCPSD@DOT.GOV within 5 business days of any accident (as defined in 49 CFR 390.5) that occurs while its driver is operating under the terms of this exemption. The notification must include:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver’s name and license number.

² Neither IFPL 1 nor IFPL 2 restricts the transportation of timber.

- d. Vehicle number and state license number.
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- i. The driver's total driving time and total on-duty time period at the time of the accident.

Preemption

In accordance with 49 U.S.C. 31315(d), during periods that this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Termination

The FMCSA does not believe the safety record of any driver operating under this exemption will deteriorate. However, should deterioration in safety occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA in its discretion may revoke the exemption immediately for failure to comply with its terms and conditions.

Issued on: March 12, 2015.

T.F. Scott Darling, III,
Acting Administrator.

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